

The requirement of IGRA that the Secretary make a two-part finding of “no detriment” to the community and “best interests” of the tribe was the focus of decision-making on the application to take land into trust for gaming in Hudson. Neither the statute nor the case law defines what constitutes the “best interest of the Indian tribe and its members,” what circumstances would or would not “be detrimental to the surrounding community,” or even what constitutes the “surrounding community,” or how to identify the “nearby tribes.” Moreover, the statute does not establish the quality or quantity of evidence necessary to support the Secretary’s findings on these issues. These ambiguities formed an important context for consideration of the Hudson application.

In September 1994, the Bureau of Indian Affairs issued a “Checklist for Acquisitions for Gaming Purposes” (“the Checklist”) to assure that a proposed land acquisition for gaming purposes “is fully documented prior to its submission to Central Office for review.”⁶² The document was circulated to Area Offices and in use by their staffs several months before the memo was officially distributed. Area Office staff said they used the Checklist in reviewing and processing the Hudson application. The Checklist set forth the topics that must be addressed by the Area Office in its consideration of and recommendation regarding an application to take off-reservation land into trust for gaming purposes in accordance with IGRA and the Part 151 regulations implementing IRA. It also provided limited guidance in interpreting some of the terms of IGRA.

⁶²Memo from Acting Deputy Commissioner of Indian Affairs Patrick A. Hayes to all Area Directors, Sept. 28, 1994.